

SECOND REGULAR SESSION
[TRULY AGREED TO AND FINALLY PASSED]
SENATE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 2376
98TH GENERAL ASSEMBLY

5857S.05T

2016

AN ACT

To repeal section 227.107, RSMo, and to enact in lieu thereof three new sections relating to construction regulation.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Section 227.107, is repealed and three new sections enacted in lieu thereof,
2 to be known as sections 67.5050, 67.5060, and 227.107, to read as follows:

67.5050. 1. As used in this section, the following terms mean:

2 **(1) "Construction manager", the legal entity that proposes to enter into a**
3 **construction management-at-risk contract under this section;**

4 **(2) "Construction manager-at-risk", a sole proprietorship, partnership,**
5 **corporation, or other legal entity that assumes the risk for the construction, rehabilitation,**
6 **alteration, or repair of a project at the contracted price as a general contractor and**
7 **provides consultation to a political subdivision regarding construction during and after the**
8 **design of the project.**

9 **2. Any political subdivision may use the construction manager-at-risk method for:**
10 **civil works projects such as roads, streets, bridges, utilities, water supply projects, water**
11 **plants, wastewater plants, water distribution and wastewater conveyance facilities, airport**
12 **runways and taxiways, storm drainage and flood control projects, or transit projects**
13 **commonly designed by professional engineers in excess of two million dollars; and non-civil**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

14 works projects such as buildings, site improvements, and other structures, habitable or not,
15 commonly designed by architects in excess of three million dollars. In using that method
16 and in entering into a contract for the services of a construction manager-at-risk, the
17 political subdivision shall follow the procedures prescribed by this section.

18 **3. The political subdivision shall publicly disclose at a regular meeting its intent to**
19 **utilize the construction management at-risk method and its selection criteria at least one**
20 **week prior to publishing the request for qualifications. Before or concurrently with**
21 **selecting a construction manager-at-risk, the political subdivision shall select or designate**
22 **an engineer or architect who shall prepare the construction documents for the project and**
23 **who shall comply with all state laws, as applicable. If the engineer or architect is not a full-**
24 **time employee of the political subdivision, the political subdivision shall select the engineer**
25 **or architect on the basis of demonstrated competence and qualifications as provided by**
26 **sections 8.285 to 8.291. The political subdivision's engineer or architect for a project may**
27 **not serve, alone or in combination with another, as the construction manager-at-risk. This**
28 **subsection does not prohibit a political subdivision's engineer or architect from providing**
29 **customary construction phase services under the engineer's or architect's original**
30 **professional service agreement in accordance with applicable licensing laws.**

31 **4. The political subdivision may provide or contract for, independently of the**
32 **construction manager-at-risk, inspection services, testing of construction materials,**
33 **engineering, and verification of testing services necessary for acceptance of the project by**
34 **the political subdivision.**

35 **5. The political subdivision shall select the construction manager-at-risk in a two-**
36 **step process. The political subdivision shall prepare a request for qualifications, for the**
37 **case of the first step of the two-step process, that includes general information on the**
38 **project site, project scope, schedule, selection criteria, and the time and place for receipt**
39 **of proposals or qualifications, as applicable, and other information that may assist the**
40 **political subdivision in its selection of a construction manager-at-risk. The political**
41 **subdivision shall state the selection criteria in the request for proposals or qualifications,**
42 **as applicable. The selection criteria may include the construction manager's experience,**
43 **past performance, safety record, proposed personnel and methodology, and other**
44 **appropriate factors that demonstrate the capability of the construction manager-at-risk.**
45 **The political subdivision shall not request fees or prices in step one. In step two, the**
46 **political subdivision may request that five or fewer construction managers, selected solely**
47 **on the basis of qualifications, provide additional information, including the construction**
48 **manager-at-risk's proposed fee and its price for fulfilling the general conditions.**

49 **Qualifications shall account for a minimum of forty percent of the evaluation. Cost shall**
50 **account for a maximum of sixty percent of the evaluation.**

51 **6. The political subdivision shall publish the request for proposals or qualifications**
52 **by publication in a newspaper of general circulation published in the county where the**
53 **political subdivision is located once a week for two consecutive weeks prior to opening the**
54 **proposals or qualifications submissions or by a virtual notice procedure that notifies**
55 **interested parties for at least twenty various purchases, design contracts, construction**
56 **contracts, or other contracts each year for the political subdivision.**

57 **7. For each step, the political subdivision shall receive, publicly open, and read**
58 **aloud the names of the construction managers. Within forty-five days after the date of**
59 **opening the proposals or qualification submissions, the political subdivision or its**
60 **representative shall evaluate and rank each proposal or qualification submission submitted**
61 **in relation to the criteria set forth in the request for proposals or request for qualifications.**
62 **The political subdivision shall interview at least two of the top qualified offerors as part**
63 **of the final selection.**

64 **8. The political subdivision or its representative shall select the construction**
65 **manager that submits the proposal that offers the best value for the political subdivision**
66 **based on the published selection criteria and on its ranking evaluation. The political**
67 **subdivision or its representative shall first attempt to negotiate a contract with the selected**
68 **construction manager. If the political subdivision or its representative is unable to**
69 **negotiate a satisfactory contract with the selected construction manager, the political**
70 **subdivision or its representative shall, formally and in writing, end negotiations with that**
71 **construction manager and proceed to negotiate with the next construction manager in the**
72 **order of the selection ranking until a contract is reached or negotiations with all ranked**
73 **construction managers end.**

74 **9. A construction manager-at-risk shall publicly advertise, in the manner**
75 **prescribed by chapter 50, and receive bids or proposals from trade contractors or**
76 **subcontractors for the performance of all major elements of the work other than the minor**
77 **work that may be included in the general conditions. A construction manager-at-risk may**
78 **seek to perform portions of the work itself if the construction manager-at-risk submits its**
79 **sealed bid or sealed proposal for those portions of the work in the same manner as all other**
80 **trade contractors or subcontractors. All sealed bids or proposals shall be submitted at the**
81 **time and location as specified in the advertisement for bids or proposals and shall be**
82 **publicly opened and the identity of each bidder and their bid amount shall be read aloud.**
83 **The political subdivision shall have the authority to restrict the construction manager-at-**
84 **risk from submitting bids to perform portions of the work.**

85 **10. The construction manager-at-risk and the political subdivision or its**
86 **representative shall review all trade contractor, subcontractor, or construction manager-**
87 **at-risk bids or proposals in a manner that does not disclose the contents of the bid or**
88 **proposal during the selection process to a person not employed by the construction**
89 **manager-at-risk, engineer, architect, or political subdivision involved with the project. If**
90 **the construction manager-at-risk submitted bids or proposals, the political subdivision**
91 **shall determine if the construction manager-at-risk's bid or proposal offers the best value**
92 **for the political subdivision. After all proposals have been evaluated and clarified, the**
93 **award of all subcontracts shall be made public.**

94 **11. If the construction manager-at-risk reviews, evaluates, and recommends to the**
95 **political subdivision a bid or proposal from a trade contractor or subcontractor but the**
96 **political subdivision requires another bid or proposal to be accepted, the political**
97 **subdivision shall compensate the construction manager-at-risk by a change in price, time,**
98 **or guaranteed maximum cost for any additional cost and risk that the construction**
99 **manager-at-risk may incur because of the political subdivision's requirement that another**
100 **bid or proposal be accepted.**

101 **12. If a selected trade contractor or subcontractor materially defaults in the**
102 **performance of its work or fails to execute a subcontract after being selected in accordance**
103 **with this section, the construction manager-at-risk may itself, without advertising, fulfill**
104 **the contract requirements or select a replacement trade contractor or subcontractor to**
105 **fulfill the contract requirements. The penal sums of the performance and payment bonds**
106 **delivered to the political subdivision shall each be in an amount equal to the fixed contract**
107 **amount or guaranteed maximum price. The construction manager-at-risk shall deliver the**
108 **bonds not later than the tenth day after the date the fixed contract amount or guaranteed**
109 **maximum price is established.**

110 **13. Any political subdivision engaged in a project under this section, which impacts**
111 **a railroad regulated by the Federal Railroad Administration, shall consult with the**
112 **affected railroad on required specifications relating to clearance, safety, insurance, and**
113 **indemnification to be included in the construction documents for such project.**

114 **14. This section shall not apply to:**

115 **(1) Any metropolitan sewer district established under article VI, section 30(a) of**
116 **the Constitution of Missouri;**

117 **(2) Any special charter city, or any city or county governed by home rule under**
118 **article VI, section 18 or 19 of the Constitution of Missouri that has adopted a construction**
119 **manager-at-risk method via ordinance, rule or regulation.**

120 **15. Notwithstanding the provisions of section 23.253 to the contrary, the provisions**
121 **of this section shall expire September 1, 2026.**

67.5060. 1. As used in this section, the following terms mean:

2 **(1) "Design-build", a project delivery method subject to a three-stage**
3 **qualifications-based selection for which the design and construction services are furnished**
4 **under one contract;**

5 **(2) "Design-build contract", a contract which is subject to a three-stage**
6 **qualifications-based selection process similar to that described in sections 8.285 to 8.291**
7 **between a political subdivision and a design-builder to furnish the architectural,**
8 **engineering, and related design services and the labor, materials, supplies, equipment, and**
9 **other construction services required for a design-build project;**

10 **(3) "Design-build project", the design, construction, alteration, addition,**
11 **remodeling, or improvement of any buildings or facilities under contract with a political**
12 **subdivision. Such design-build projects include, but are not limited to:**

13 **(a) Civil works projects, such as roads, streets, bridges, utilities, airport runways**
14 **and taxiways, storm drainage and flood control projects, or transit projects; and**

15 **(b) Non-civil works projects, such as buildings, site improvements, and other**
16 **structures, habitable or not, commonly designed by architects in excess of seven million**
17 **dollars;**

18 **(4) "Design-builder", any individual, partnership, joint venture, or corporation**
19 **subject to a qualification-based selection that offers to provide or provides design services**
20 **and general contracting services through a design-build contract in which services within**
21 **the scope of the practice of professional architecture or engineering are performed**
22 **respectively by a licensed architect or licensed engineer and in which services within the**
23 **scope of general contracting are performed by a general contractor or other legal entity**
24 **that furnishes architecture or engineering services and construction services either directly**
25 **or through subcontracts or joint ventures;**

26 **(5) "Design criteria consultant", a person, corporation, partnership, or other legal**
27 **entity duly licensed and authorized to practice architecture or professional engineering in**
28 **this state under chapter 327, who is employed by or contracted by the political subdivision**
29 **to assist the political subdivision in the development of project design criteria, requests for**
30 **proposals, evaluation of proposals, the evaluation of the construction under a design-build**
31 **contract to determine adherence to the design criteria, and any additional services**
32 **requested by the political subdivisions to represent its interests in relation to a project. The**
33 **design criteria consultant may not submit a proposal or furnish design or construction**
34 **services for the design-build contract for which its services were sought;**

35 **(6) "Design criteria package", performance-oriented program, scope, and**
36 **specifications for the design-build project sufficient to permit a design-builder to prepare**
37 **a response to a political subdivision's request for proposals for a design-build project,**
38 **which may include capacity, durability, standards, ingress and egress requirements,**
39 **performance requirements, description of the site, surveys, soil and environmental**
40 **information concerning the site, interior space requirements, material quality standards,**
41 **design and construction schedules, site development requirements, provisions for utilities,**
42 **storm water retention and disposal, parking requirements, applicable governmental code**
43 **requirements, preliminary designs for the project or portions thereof, and other criteria**
44 **for the intended use of the project;**

45 **(7) "Design professional services", services that are:**

46 **(a) Within the practice of architecture as defined in section 327.091, or within the**
47 **practice of professional engineering as defined in section 327.181; or**

48 **(b) Performed by a licensed or authorized architect or professional engineer in**
49 **connection with the architect's or professional engineer's employment or practice;**

50 **(8) "Proposal", an offer in response to a request for proposals by a design-builder**
51 **to enter into a design-build contract for a design-build project under this section;**

52 **(9) "Request for proposal", the document by which the political subdivision solicits**
53 **proposals for a design-build contract;**

54 **(10) "Stipend", an amount paid to the unsuccessful but responsive, short-listed**
55 **design-builders to defray the cost of participating in phase II of the selection process**
56 **described in this section.**

57 **2. In using a design-build contract, the political subdivision shall determine the**
58 **scope and level of detail required to permit qualified persons to submit proposals in**
59 **accordance with the request for proposals given the nature of the project.**

60 **3. A design criteria consultant shall be employed or retained by the political**
61 **subdivision to assist in preparation of the design criteria package and request for proposal,**
62 **perform periodic site visits to observe adherence to the design criteria, prepare progress**
63 **reports, review and approve progress and final pay applications of the design-builder,**
64 **review shop drawings and submissions, provide input in disputes, help interpret the**
65 **construction documents, perform inspections upon substantial and final completion, assist**
66 **in warranty inspections, and provide any other professional service assisting with the**
67 **project administration. The design criteria consultant may also evaluate construction as**
68 **to the adherence of the design criteria. The consultant shall be selected and its contract**
69 **negotiated in compliance with sections 8.285 to 8.291 unless the consultant is a direct**
70 **employee of the political subdivision.**

71 **4. The political subdivision shall publicly disclose at a regular meeting its intent to**
72 **utilize the design-build method and its project design criteria at least one week prior to**
73 **publishing the request for proposals. Notice of requests for proposals shall be advertised**
74 **by publication in a newspaper of general circulation published in the county where the**
75 **political subdivision is located once a week for two consecutive weeks prior to opening the**
76 **proposals, or by a virtual notice procedure that notifies interested parties for at least**
77 **twenty various purchases, design contracts, construction contracts, or other contracts each**
78 **year for the political subdivision. The political subdivision shall publish a notice of a**
79 **request for proposal with a description of the project, the procedures for submission, and**
80 **the selection criteria to be used.**

81 **5. The political subdivision shall establish in the request for proposal a time, place,**
82 **and other specific instructions for the receipt of proposals. Proposals not submitted in**
83 **strict accordance with the instructions shall be subject to rejection.**

84 **6. A request for proposal shall be prepared for each design-build contract**
85 **containing at minimum the following elements:**

86 **(1) The procedures to be followed for submitting proposals, the criteria for**
87 **evaluating proposals and their relative weight, and the procedures for making awards;**

88 **(2) The proposed terms and conditions for the design-build contract, if available;**

89 **(3) The design criteria package;**

90 **(4) A description of the drawings, specifications, or other information to be**
91 **submitted with the proposal, with guidance as to the form and level of completeness of the**
92 **drawings, specifications, or other information that will be acceptable;**

93 **(5) A schedule for planned commencement and completion of the design-build**
94 **contract, if any;**

95 **(6) Budget limits for the design-build contract, if any;**

96 **(7) Requirements including any available ratings for performance bonds, payment**
97 **bonds, and insurance, if any;**

98 **(8) The amount of the stipend which will be available; and**

99 **(9) Any other information that the political subdivision in its discretion chooses to**
100 **supply including, but not limited to, surveys, soil reports, drawings of existing structures,**
101 **environmental studies, photographs, references to public records, or affirmative action and**
102 **minority business enterprise requirements consistent with state and federal law.**

103 **7. The political subdivision shall solicit proposals in a three-stage process. Phase**
104 **I shall be the solicitation of qualifications of the design-build team. Phase II shall be the**
105 **solicitation of a technical proposal including conceptual design for the project. Phase III**
106 **shall be the proposal of the construction cost.**

107 **8. The political subdivision shall review the submissions of the proposals and assign**
108 **points to each proposal in accordance with this section and as set out in the instructions of**
109 **the request for proposal.**

110 **9. Phase I shall require all design-builders to submit a statement of qualification**
111 **that shall include, but not be limited to:**

112 **(1) Demonstrated ability to perform projects comparable in design, scope, and**
113 **complexity;**

114 **(2) References of owners for whom design-build projects, construction projects, or**
115 **design projects have been performed;**

116 **(3) Qualifications of personnel who will manage the design and construction aspects**
117 **of the project; and**

118 **(4) The names and qualifications of the primary design consultants and the**
119 **primary trade contractors with whom the design-builder proposes to subcontract or joint**
120 **venture. The design-builder may not replace an identified contractor, subcontractor,**
121 **design consultant, or subconsultant without the written approval of the political**
122 **subdivision.**

123 **10. The political subdivision shall evaluate the qualifications of all the design-**
124 **builders who submitted proposals in accordance with the instructions of the request for**
125 **proposal. Architectural and engineering services on the project shall be evaluated in**
126 **accordance with the requirements of sections 8.285 and 8.291. Qualified design-builders**
127 **selected by the evaluation team may proceed to phase II of the selection process. Design-**
128 **builders lacking the necessary qualifications to perform the work shall be disqualified and**
129 **shall not proceed to phase II of the process. This process of short listing shall narrow the**
130 **number of qualified design-builders to not more than five nor fewer than two. Under no**
131 **circumstances shall price or fees be a part of the prequalification criteria. Design-builders**
132 **may be interviewed in either phase I or phase II of the process. Points assigned in phase**
133 **I of the evaluation process shall not carry forward to phase II of the process. All qualified**
134 **design-builders shall be ranked on points given in phases II and III only.**

135 **11. The political subdivision shall have discretion to disqualify any design-builder**
136 **who, in the political subdivision's opinion, lacks the minimum qualifications required to**
137 **perform the work.**

138 **12. Once a sufficient number of no more than five and no fewer than two qualified**
139 **design-builders have been selected, the design-builders shall have a specified amount of**
140 **time in which to assemble phase II and phase III proposals.**

141 **13. Phase II of the process shall be conducted as follows:**

142 (1) The political subdivision shall invite the top qualified design-builders to
143 participate in phase II of the process;

144 (2) A design-builder shall submit its design for the project to the level of detail
145 required in the request for proposal. The design proposal shall demonstrate compliance
146 with the requirements set out in the request for proposal;

147 (3) The ability of the design-builder to meet the schedule for completing a project
148 as specified by the political subdivision may be considered as an element of evaluation in
149 phase II;

150 (4) Up to twenty percent of the points awarded to each design-builder in phase II
151 may be based on each design-builder's qualifications and ability to design, contract, and
152 deliver the project on time and within the budget of the political subdivision;

153 (5) Under no circumstances shall the design proposal contain any reference to the
154 cost of the proposal; and

155 (6) The submitted designs shall be evaluated and assigned points in accordance
156 with the requirements of the request for proposal. Phase II shall account for not less than
157 forty percent of the total point score as specified in the request for proposal.

158 14. Phase III shall be conducted as follows:

159 (1) The phase III proposal shall provide a firm, fixed cost of design and
160 construction. The proposal shall be accompanied by bid security and any other items, such
161 as statements of minority participation as required by the request for proposal;

162 (2) Cost proposals shall be submitted in accordance with the instructions of the
163 request for proposal. The political subdivision shall reject any proposal that is not
164 submitted on time. Phase III shall account for not less than forty percent of the total point
165 score as specified in the request for proposal;

166 (3) Proposals for phase II and phase III shall be submitted concurrently at the time
167 and place specified in the request for proposal, but in separate envelopes or other means
168 of submission. The phase III cost proposals shall be opened only after the phase II design
169 proposals have been evaluated and assigned points, ranked in order, and posted;

170 (4) Cost proposals shall be opened and read aloud at the time and place specified
171 in the request for proposal. At the same time and place, the evaluation team shall make
172 public its scoring of phase II. Cost proposals shall be evaluated in accordance with the
173 requirements of the request for proposal. In evaluating the cost proposals, the lowest
174 responsive bidder shall be awarded the total number of points assigned to be awarded in
175 phase III. For all other bidders, cost points shall be calculated by reducing the maximum
176 points available in phase III by at least one percent for each percentage point by which the

177 bidder exceeds the lowest bid and the points assigned shall be added to the points assigned
178 for phase II for each design-builder;

179 (5) If the political subdivision determines that it is not in the best interest of the
180 political subdivision to proceed with the project pursuant to the proposal offered by the
181 design-builder with the highest total number of points, the political subdivision shall reject
182 all proposals. In this event, all qualified and responsive design-builders with lower point
183 totals shall receive a stipend and the responsive design-builder with the highest total
184 number of points shall receive an amount equal to two times the stipend. If the political
185 subdivision decides to award the project, the responsive design-builder with the highest
186 number of points shall be awarded the contract; and

187 (6) If all proposals are rejected, the political subdivision may solicit new proposals
188 using different design criteria, budget constraints, or qualifications.

189 15. As an inducement to qualified design-builders, the political subdivision shall
190 pay a reasonable stipend, the amount of which shall be established in the request for
191 proposal, to each prequalified design-builder whose proposal is responsive but not
192 accepted. Such stipend shall be no less than one-half of one percent of the total project
193 budget. Upon payment of the stipend to any unsuccessful design-builder, the political
194 subdivision shall acquire a nonexclusive right to use the design submitted by the design-
195 builder, and the design-builder shall have no further liability for the use of the design by
196 the political subdivision in any manner. If the design-builder desires to retain all rights
197 and interest in the design proposed, the design-builder shall forfeit the stipend.

198 16. As used in this subsection, "wastewater or water contract" means any design-
199 build contract that involves the provision of engineering and construction services either
200 directly by a party to the contract or through subcontractors retained by a party to the
201 contract for a wastewater or water storage, conveyance, or treatment facility project.

202 (1) Any political subdivision may enter into a wastewater or water contract for
203 design-build of a wastewater or water project.

204 (2) In disbursing community development block grants under 42 U.S.C. Sections
205 5301 to 5321, the department of economic development shall not reject wastewater or water
206 projects solely for utilizing wastewater or water contracts.

207 (3) The department of natural resources shall not preclude wastewater or water
208 contracts from consideration for funding provided by the water and wastewater loan fund
209 under section 644.122.

210 (4) A political subdivision planning a wastewater or water design-build project
211 shall retain an engineer duly licensed in this state to assist in preparing any necessary
212 documents and specifications and evaluations of design-build proposals.

213 **17. The payment bond requirements of section 107.170 shall apply to the design-**
214 **build project. All persons furnishing design services shall be deemed to be covered by the**
215 **payment bond the same as any person furnishing labor and materials. The performance**
216 **bond for the design-builder shall not cover any damages of the type specified to be covered**
217 **by the professional liability insurance established by the political subdivision in the request**
218 **for proposals.**

219 **18. Any person or firm performing architectural, engineering, landscape**
220 **architecture, or land-surveying services for the design-builder on the design-build project**
221 **shall be duly licensed or authorized in this state to provide such services as required by**
222 **chapter 327.**

223 **19. Any political subdivision engaged in a project under this section, which impacts**
224 **a railroad regulated by the Federal Railroad Administration, shall consult with the**
225 **affected railroad on required specifications relating to clearance, safety, insurance, and**
226 **indemnification to be included in the construction documents for such project.**

227 **20. Under section 327.465, any design-builder that enters into a design-build**
228 **contract with a political subdivision is exempt from the requirement that such person or**
229 **entity hold a license or that such corporation hold a certificate of authority if the**
230 **architectural, engineering, or land-surveying services to be performed under the design-**
231 **build contract are performed through subcontracts or joint ventures with properly licensed**
232 **or authorized persons or entities, and not performed by the design-builder or its own**
233 **employees.**

234 **21. This section shall not apply to:**

235 **(1) Any metropolitan sewer district established under article VI, section 30(a) of**
236 **the Constitution of Missouri; or**

237 **(2) Any special charter city, or any city or county governed by home rule under**
238 **article VI, section 18 or 19 of the Constitution of Missouri that has adopted a design-build**
239 **process via ordinance, rule, or regulation.**

240 **22. The authority to use design-build and design-build contracts provided under**
241 **this section shall expire September 1, 2026.**

227.107. 1. Notwithstanding any provision of section 227.100 to the contrary, as an
2 alternative to the requirements and procedures specified by sections 227.040 to 227.100, the state
3 highways and transportation commission is authorized to enter into highway design-build project
4 contracts. The total number of highway design-build project contracts awarded by the
5 commission in any state fiscal year shall not exceed two percent of the total number of all state
6 highway system projects awarded to contracts for construction from projects listed in the
7 commission's approved statewide transportation improvement project for that state fiscal year.

8 [Authority to enter into design-build projects granted by this section shall expire on July 1, 2018,
9 unless extended by statute.]

10 2. Notwithstanding provisions of subsection 1 of this section to the contrary, the state
11 highways and transportation commission is authorized to enter into additional design-build
12 contracts for the design, construction, reconstruction, or improvement of Missouri Route 364 as
13 contained in any county with a charter form of government and with more than two hundred fifty
14 thousand but fewer than three hundred fifty thousand inhabitants and in any county with a charter
15 form of government and with more than one million inhabitants, and the State Highway 169 and
16 96th Street intersection located within a home rule city with more than four hundred thousand
17 inhabitants and located in more than one county. The state highways and transportation
18 commission is authorized to enter into an additional design-build contract for the design,
19 construction, reconstruction, or improvement of State Highway 92, contained in a county of the
20 first classification with more than one hundred eighty-four thousand but fewer than one hundred
21 eighty-eight thousand inhabitants, from its intersection with State Highway 169, east to its
22 intersection with State Highway E. The state highways and transportation commission is
23 authorized to enter into an additional design-build contract for the design, construction,
24 reconstruction, or improvement of US 40/61 I-64 Missouri River Bridge as contained in any
25 county with a charter form of government and with more than one million inhabitants and any
26 county with a charter form of government and with more than two hundred fifty thousand but
27 fewer than three hundred fifty thousand inhabitants. [The authority to enter into a design-build
28 highway project under this subsection shall not be subject to the time limitation expressed in
29 subsection 1 of this section.]

30 3. For the purpose of this section a "design-builder" is defined as an individual,
31 corporation, partnership, joint venture or other entity, including combinations of such entities
32 making a proposal to perform or performing a design-build highway project contract.

33 4. For the purpose of this section, "design-build highway project contract" is defined as
34 the procurement of all materials and services necessary for the design, construction,
35 reconstruction or improvement of a state highway project in a single contract with a
36 design-builder capable of providing the necessary materials and services.

37 5. For the purpose of this section, "highway project" is defined as the design,
38 construction, reconstruction or improvement of highways or bridges under contract with the state
39 highways and transportation commission, which is funded by state, federal or local funds or any
40 combination of such funds.

41 6. In using a design-build highway project contract, the commission shall establish a
42 written procedure by rule for prequalifying design-builders before such design-builders will be
43 allowed to make a proposal on the project.

44 7. In any design-build highway project contract, whether involving state or federal funds,
45 the commission shall require that each person submitting a request for qualifications provide a
46 detailed disadvantaged business enterprise participation plan. The plan shall provide information
47 describing the experience of the person in meeting disadvantaged business enterprise
48 participation goals, how the person will meet the department of transportation's disadvantaged
49 business enterprise participation goal and such other qualifications that the commission considers
50 to be in the best interest of the state.

51 8. The commission is authorized to issue a request for proposals to a maximum of five
52 design-builders prequalified in accordance with subsection 6 of this section.

53 9. The commission may require approval of any person performing subcontract work on
54 the design-build highway project.

55 10. Notwithstanding the provisions of sections 107.170, and 227.100, to the contrary,
56 the commission shall require the design-builder to provide to the commission directly such bid,
57 performance and payment bonds, or such letters of credit, in such terms, durations, amounts, and
58 on such forms as the commission may determine to be adequate for its protection and provided
59 by a surety or sureties authorized to conduct surety business in the state of Missouri or a federally
60 insured financial institution or institutions, satisfactory to the commission, including but not
61 limited to:

62 (1) A bid or proposal bond, cash or a certified or cashier's check;

63 (2) A performance bond or bonds for the construction period specified in the
64 design-build highway project contract equal to a reasonable estimate of the total cost of
65 construction work under the terms of the design-build highway project contract. If the
66 commission determines in writing supported by specific findings that the reasonable estimate of
67 the total cost of construction work under the terms of the design-build highway project contract
68 is expected to exceed two-hundred fifty million dollars and a performance bond or bonds in such
69 amount is impractical, the commission shall set the performance bond or bonds at the largest
70 amount reasonably available, but not less than two-hundred fifty million dollars, and may require
71 additional security, including but not limited to letters of credit, for the balance of the estimate
72 not covered by the performance bond or bonds;

73 (3) A payment bond or bonds that shall be enforceable under section 522.300 for the
74 protection of persons supplying labor and material in carrying out the construction work
75 provided for in the design-build highway project contract. The aggregate amount of the payment
76 bond or bonds shall equal a reasonable estimate of the total amount payable for the cost of
77 construction work under the terms of the design-build highway project contract unless the
78 commission determines in writing supported by specific findings that a payment bond or bonds
79 in such amount is impractical, in which case the commission shall establish the amount of the

80 payment bond or bonds; except that the amount of the payment bond or bonds shall not be less
81 than the aggregate amount of the performance bond or bonds and any additional security to such
82 performance bond or bonds; and

83 (4) Upon award of the design-build highway project contract, the sum of the
84 performance bond and any required additional security established under subdivisions (2) and
85 (3) of this subsection shall be stated, and shall be a matter of public record.

86 11. The commission is authorized to prescribe the form of the contracts for the work.

87 12. The commission is empowered to make all final decisions concerning the
88 performance of the work under the design-build highway project contract, including claims for
89 additional time and compensation.

90 13. The provisions of sections 8.285 to 8.291 shall not apply to the procurement of
91 architectural, engineering or land surveying services for the design-build highway project, except
92 that any person providing architectural, engineering or land surveying services for the
93 design-builder on the design-build highway project must be licensed in Missouri to provide such
94 services.

95 14. The commission shall pay a reasonable stipend to prequalified responsive
96 design-builders who submit a proposal, but are not awarded the design-build highway project.

97 15. The commission shall comply with the provisions of any act of congress or any
98 regulations of any federal administrative agency which provides and authorizes the use of federal
99 funds for highway projects using the design-build process.

100 16. The commission shall promulgate administrative rules to implement this section or
101 to secure federal funds. Such rules shall be published for comment in the Missouri Register and
102 shall include prequalification criteria, the make-up of the prequalification review team,
103 specifications for the design criteria package, the method of advertising, receiving and evaluating
104 proposals from design-builders, the criteria for awarding the design-build highway project based
105 on the design criteria package and a separate proposal stating the cost of construction, and other
106 methods, procedures and criteria necessary to administer this section.

107 17. The commission shall make a status report to the members of the general assembly
108 and the governor following the award of the design-build project, as an individual component
109 of the annual report submitted by the commission to the joint transportation oversight committee
110 in accordance with the provisions of section 21.795. The annual report prior to advertisement
111 of the design-build highway project contracts shall state the goals of the project in reducing costs
112 and/or the time of completion for the project in comparison to the design-bid-build method of
113 construction and objective measurements to be utilized in determining achievement of such
114 goals. Subsequent annual reports shall include: the time estimated for design and construction
115 of different phases or segments of the project and the actual time required to complete such work

116 during the period; the amount of each progress payment to the design-builder during the period
117 and the percentage and a description of the portion of the project completed regarding such
118 payment; the number and a description of design change orders issued during the period and the
119 cost of each such change order; upon substantial and final completion, the total cost of the
120 design-build highway project with a breakdown of costs for design and construction; and such
121 other measurements as specified by rule. The annual report immediately after final completion
122 of the project shall state an assessment of the advantages and disadvantages of the design-build
123 method of contracting for highway and bridge projects in comparison to the design-bid-build
124 method of contracting and an assessment of whether the goals of the project in reducing costs
125 and/or the time of completion of the project were met.

126 18. The commission shall give public notice of a request for qualifications in at least two
127 public newspapers that are distributed wholly or in part in this state and at least one construction
128 industry trade publication that is distributed nationally.

129 19. The commission shall publish its cost estimates of the design-build highway project
130 award and the project completion date along with its public notice of a request for qualifications
131 of the design-build project.

132 20. If the commission fails to receive at least two responsive submissions from
133 design-builders considered qualified, submissions shall not be opened and it shall readvertise the
134 project.

135 21. For any highway design-build project constructed under this section, the commission
136 shall negotiate and reach agreements with affected railroads. Such agreements shall include
137 clearance, safety, insurance, and indemnification provisions, but are not required to include
138 provisions on right-of-way acquisitions.

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